

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 21 2003

OFFICE OF
MANAGING DIRECTOR

Eric W. DeSilva, Esq.
Wiley Rein & Fielding, LLP
1776 K Street, N.W.
Washington, D.C. 20006

Re: The Beeper Company
Request for Waiver of Assignment Application Fee
Fee Control No. 00000RROG-03-087

Dear Mr. DeSilva:

This letter responds to your request (dated May 20, 2003) submitted on behalf of The **Beeper Company (TBC)** for a waiver of the application fee in connection with its assignment application. You also request a waiver of Section 1.1117(e) of the Commission's rules, 47 C.F.R. §1.1117(e), which requires that a fee waiver request be accompanied by payment of the fee. Our records reflect that you have not paid the \$325.00 application fee at issue here.

In your request, you state that in the assignment application at issue here, TBC, a subsidiary of NTELOS, Inc., requests FCC consent to an involuntary assignment of its FCC license from TBC to TBC as Debtor-in-Possession in order to facilitate its reorganization under Chapter 11 of the Bankruptcy Code. You state that on March 4, 2003, TBC filed for reorganization under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court of the Eastern District of Virginia (the Bankruptcy Court). You submit a copy of the Bankruptcy Court's "Order under Federal Rule of Bankruptcy Procedure 1015(b) Directing Joint Administration of Cases," dated March 4, 2003, consolidating the bankruptcy cases of NTELOS, Inc. and its subsidiaries, including the bankruptcy case of TBC. You assert that the bankrupt status of TBC provides good cause for the waiver of the filing fee. You also contend that a waiver of the filing fee will enable TBC to preserve assets that will accrue to the benefit of innocent creditors.

Section 1.1117 of the Commission's rules, 47 C.F.R. §1.1117, provides that filing fees may be waived upon a showing of good cause and a finding that the public interest will be served thereby. *See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990). We find that the bankruptcy filing involving TBC substantiates its claim of financial hardship and demonstrates good cause for waiver of the filing fee. *See MobileMedia Corporation*, 14 FCC Rcd 8017, 8027 (1999) (bankruptcy establishes good cause for waiver of filing fee). Moreover, waiver of the filing fee will serve the public interest by protecting the interests of innocent creditors. Therefore, your request for


Mr. Eric W. DeSilva

2.

waiver of the provisions of Section 1.1117(e) and for waiver of the application filing fee in connection with the assignment application are granted.¹

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Reger', with a stylized flourish at the end.

Mark A. Reger
Chief Financial Officer

¹ You state that TBC is also seeking a waiver of the 30-day assignment application filing deadline imposed by Section 1.948(c)(2) of the Commission's rules. Our waiver of the provisions of Section 1.1117(e) and waiver of the application filing fee are necessarily dependent upon the Wireless Telecommunications Bureau's treatment of the application.



00000RR06-03-087

ORIGINAL

Wiley Rein & Fielding LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

Virginia Office
7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

May 20, 2003

FCC/MELLON

MAY 21 2003

Eric W. DeSilva
202.719.3182
edesilva@wrf.com

Managing Director
Federal Communications Commission
Wireless Bureau Applications
445 12th Street, S.W.
Room 1A625
Washington, D.C. 20554

REC'D & INSPECTED

MAY 23 2003

FCC-GEG MAIL ROOM

Federal Communications Commission
Wireless Bureau Applications
P.O. Box 358994
Pittsburgh, PA 15251-5994

Re: Request for Waiver of Fees

Managing Director:

In this transaction The Beeper Company ("TBC") requests a waiver under Section 1.1117(a) of the Commission's rules of the filing fees associated with its assignment authorization application.¹

In a separate but related filing TBC, a subsidiary of NTELOS Inc., is seeking FCC consent to an involuntary assignment of its FCC license from TBC to TBC, as Debtor-in-Possession. Additionally, TBC is seeking a waiver of the 30-day filing deadline imposed by 47 C.F.R. § 1.948(c)(2). On April 2, 2003, NTELOS and its other subsidiaries each made required filings to assign over 100 FCC authorizations in seven different radio services to the relevant companies as Debtors-in-Possession. Due to administrative error, TBC failed to file its assignment application with the other NTELOS subsidiaries. TBC requests a waiver of the filing fees for the assignment application and the Section 1.948(c)(2) waiver under Section 1.1117 of the Commission's Rules.

TBC is filing the assignment authorization application to facilitate its reorganization under Chapter 11 of the Bankruptcy Code. On March 4, 2003 TBC filed for reorganization under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court of the Eastern District of Virginia, Case No. 03-32094. The FCC considers the filing of a petition for bankruptcy, where the filing company

¹ 47 C.F.R. § 1.1117(a). TBC also requests a waiver of 47 C.F.R. § 1.1117(e), which requires that fee waiver requests be accompanied by the fees sought to be waived payable pending disposition of the waiver request.

RECEIVED JUL 09 2003

Wiley Rein & Fielding LLP

Managing Director
May 20, 2003
Page 2

remains as Debtor-in-Possession, to be an involuntary assignment entitled to *pro forma* treatment.²

TBC requests a waiver of all filing fees associated with the assignment application under Section 1.1117 of the Commission's rules due to financial hardship. The bankrupt status of TBC provides good cause for the waiver of these fees.³ Additionally, a waiver of the fees will serve the public interest by enabling TBC to preserve assets that will accrue to the benefit of innocent creditors.⁴

The public interest would not be served by requiring licensees in bankruptcy proceedings to place assets under FCC control, potentially making the assets unavailable when debts are settled with innocent creditors. The FCC has previously recognized that enabling bankrupt licensees to conserve assets to accrue to the benefit of innocent creditors is in the public interest.⁵ The FCC should uphold this precedent, which supports the Bankruptcy Code's requirement that debtors conserve assets during such proceedings.

If you have any questions regarding these requests please contact me at (202) 719-3182. Thank you.

Sincerely,



Eric W. DeSilva

Counsel for NTELOS Inc. and its Subsidiaries and Affiliates.

² Stephen F. Sewell, Assignments and Transfers of Control of FCC Authorizations under 310(d) of the Communications Act of 1934, 43 Fed. Comm. L.J. 277, 373 (1991).

³ Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 10 FCC Rcd 12759, 12762 (1995)(hereinafter *Implementation Order*)(determining that bankruptcy provides good cause for a fee waiver as a general standard). See also MobileMedia Corp., 14 FCC Rcd 8017 (1999)(applying the *Implementation Order* determination to approve waiver of application filing fees).

⁴ See MobileMedia at 8027.

⁵ See *supra* note 3.